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OFFICE OF PETITIONS

In re Application of

Schuster

DECISION ON APPLICATION

Application No: 10/643,279

FOR

Filed: October 18, 2003

PATENT TERM ADJUSTMENT

Atty Docket No.

07844-0569001/P534

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER UNDER 37 CFR 1.705(d)," filed November 24, 2008. Applicants request that the patent term adjustment of eight hundred sixty seven (867) days be adjusted to a determination of one thousand two hundred seventy one (1271) days.

The request for reconsideration of patent term adjustment is GRANTED-IN-PART.

On October 7, 2008, the above-identified application matured into US Patent No. 7,433,540 with a patent term adjustment of 867 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 CFR 1.705(d).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e), paid on November 24, 2008. No additional fees are required.

Patentees request recalculation of the patent term adjustment based on the decision in <u>Wyeth v. Dudas</u>, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that in view of the decision in <u>Wyeth</u>, they are entitled to a total patent term adjustment of 1271 days, which includes 404 days due to exceeding three year pendency.

In view of the Federal Circuit decision Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010), patentees request is granted-in-part. In the instant situation, patentees do not dispute the "A" period delay of 899 days, nor do they dispute the 32 day patentee delay. Also not in dispute is the 230 day overlap of the "A" and "B" periods.

Patentees err in the "B" period calculation by one day. In that, the period is calculated from the day after the 36 months, i.e. from August 19, 2006 until one day before the filing of an RCE or the issue date. In this case the RCE was filed on May 13, 2008, hence the "B" period extends from August 19, 2006 to May 12, 2008 for a total of 633 days. Thus, the PTA term is the total "A" delay of 899 days, plus the total "B" delay of 633 days, minus the overlap of 230 days, minus the applicant delay of 32 days for a total PTA of 1270 days. As a result the request of a total PTA of 1271 is granted-in-part for a total of 1270 days.

Since the Office is sua sponte granting patentee a certificate of correction, patentee has an opportunity to be heard. Patentee is given on month or thirty days whichever is longer to file a response if deemed necessary. This decision does not adjust the statutory time period for patentee to commence a civil action pursuant to 35 CFR 154.

Telephone inquiries specific to this decision should be directed to Maria Nuzzolillo, Legal Advisor, at (571) 272-8150, or the undersigned at 571-272-7757.

/Kery A. Fries/

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Associate Commissioner
for Examination Policy

cc: Adjusted PTA calculation
Draft of C of C

Day: Monday Date: 7/19/2010

Time: 11:02:32





PALM INTRANET

PTA Calculations for Application: 10/643279						
Application Filing Date: 08/18/2003 PTO Delay (PTO)						
Issue Date of Patent:	10/07/2008	Three Years:	0			
Pre-Issue Petitions:	0	Applicant Delay (APPL):	32			
Post-Issue Petitions:	0	Total PTA (days):	1270			
PTO Delay Adjustment:	403					

		<u> </u>		1		
File Contents History						
Number	Date	Contents Description	PTO	APPL	START	
81	07/19/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	403			
75.5	09/17/2008	PTA 36 MONTHS				
75	10/07/2008	PATENT ISSUE DATE USED IN PTA CALCULATION				
74	08/29/2008	EXPORT TO FINAL DATA CAPTURE				
73	08/28/2008	DISPATCH TO FDC				
72	08/28/2008	APPLICATION IS CONSIDERED READY FOR ISSUE				
71	08/27/2008	ISSUE FEE PAYMENT VERIFIED				
70	08/27/2008	ISSUE FEE PAYMENT RECEIVED				
69	05/30/2008	EXPORT TO INITIAL DATA CAPTURE			·	
67	05/27/2008	MAIL NOTICE OF ALLOWANCE				
66	05/23/2008	ISSUE REVISION COMPLETED				
65	0.5/23/2008	DOCUMENT VERIFICATION				
64	05/23/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED				
63		EXAMINER'S AMENDMENT COMMUNICATION				
62	05/22/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)				
61	05/23/2008	NOTICE OF ALLOWABILITY				
60	05/13/2008	MISCELLANEOUS INCOMING LETTER				
59	05/13/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED				
58	05/23/2008	DATE FORWARDED TO EXAMINER				
57	05/13/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)				
56	05/23/2008	DISPOSAL FOR A RCE / CPA / R129				
		INFORMATION DISCLOSURE STATEMENT				

55	05/13/2008	CONSIDERED			
54	05/13/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
47	05/13/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	05/13/2008	WORKFLOW - REQUEST FOR RCE - BEGIN		·	
45	03/17/2008	FINISHED INITIAL DATA CAPTURE			
44	03/03/2008	RECEIPT INTO PUBS			
43	02/18/2008	EXPORT TO INITIAL DATA CAPTURE			
42	02/13/2008	MAIL NOTICE OF ALLOWANCE			
41	02/12/2008	ISSUE REVISION COMPLETED			
40	02/12/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
39	02/11/2008	DOCUMENT VERIFICATION			
38	12/03/2003	CORRECTED FILING RECEIPT			
37	02/04/2008	NOTICE OF ALLOWABILITY			
33	01/30/2008	DATE FORWARDED TO EXAMINER			
32	01/16/2008	AMENDMENT AFTER FINAL REJECTION			
31	01/23/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
30	10/17/2007	CASE DOCKETED TO EXAMINER IN GAU	-	,	
29	10/16/2007	MAIL FINAL REJECTION (PTOL - 326)			
28	10/15/2007	FINAL REJECTION			
27	08/06/2007	CORRECTED FILING RECEIPT			
26	08/07/2007	DATE FORWARDED TO EXAMINER			
25	08/06/2007	RESPONSE AFTER NON-FINAL ACTION		32	23
24	08/06/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	04/05/2007	MAIL NON-FINAL REJECTION	899		-1
22	04/02/2007	NON-FINAL REJECTION			
21	11/28/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
20	03/19/2007	CASE DOCKETED TO EXAMINER IN GAU			
19	01/04/2007	CASE DOCKETED TO EXAMINER IN GAU			
18	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
17	02/14/2006	CASE DOCKETED TO EXAMINER IN GAU			
16	07/09/2004	INCOMING LETTER PERTAINING TO THE DRAWINGS			
15	05/14/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
14	05/14/2004	CASE DOCKETED TO EXAMINER IN GAU			

13	02/27/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE		
12	02/27/2004	REFERENCE CAPTURE ON IDS		
		MISCELLANEOUS INCOMING LETTER		•
		INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
10	11/28/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
9	11/12/2003	APPLICATION RETURN FROM OIPE	·	
8	11/12/2003	APPLICATION RETURN TO OIPE		
7	11/12/2003	APPLICATION DISPATCHED FROM OIPE		
6.	11/13/2003	APPLICATION IS NOW COMPLETE		
5	08/18/2003	PGPUBS NONPUB REQUEST		
4	11/03/2003	CASE CLASSIFIED BY OIPE		
3	11/03/2003	CLEARED BY OIPE CSR		
2	09/22/2003	IFW SCAN & PACR AUTO SECURITY REVIEW		
1	08/18/2003	INITIAL EXAM TEAM NN		

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE OF CORRECTION

PATENT

7,443,540 B2

DATED

October 7, 2008

INVENTOR(S):

Schuster et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 867 days

Delete the phrase "by 867 days" and insert - by 1270 days--